



STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
MARCUS HUSTON,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 1997SF0980
)	EEOC NO: 21B972884
)	ALS NO: S10981
ROCKWELL AUTOMATION,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's Motion for Summary Decision.

Respondent filed its motion and a memorandum of law in support thereof on May 10, 2000. Two sworn affidavits were attached to Respondent's motion. Complainant responded to the Motion for Summary Decision on September 28, 2000. Complainant did not attach affidavits to his response, but did attach unverified exhibits. Respondent replied to Complainant's response on October 4, 2000. This matter is now ready for decision.

Contentions of the Parties

Respondent asserts Complainant is not entitled to judgment as a matter of law because there is no genuine issue of material fact between the parties to establish Respondent's reasons for not promoting Complainant were pretextual. Complainant argues he was a victim of disparate impact discrimination and if given his day in a hearing he will prove Respondent's reasons for its failure to promote him were merely a pretext for race discrimination.

Findings of Fact

The following findings of fact were derived from the uncontested facts and sworn affidavits in the record and were not the result of any credibility determination:

1. Complainant, Marcus Huston, filed a charge of discrimination with the Illinois Department of Human Rights on June 18, 1997, alleging on his own behalf to be aggrieved by practices of race discrimination prohibited by section 2-102(A) of the Act.
2. Respondent, Rockwell Automation, is an "employer" within the meaning of the Act and is subject to the provisions of the Act.
3. Rockwell Automation is a centralized distribution center for electronic controls, sensors, and cables.
4. Marcus Huston was hired by Rockwell Automation to fill an entry level position as a Warehouse Distribution Associate on August 26, 1996.
5. Marcus Huston's race is black.
6. In March 1997, Rockwell Automation posted two job openings for Coordinator positions and Marcus Huston applied for a promotion to one of the two available positions.
7. Ten other employees also applied for the positions and all were interviewed by four supervisors. After the interviews were completed each interviewer ranked the applicants and the scores were totaled and averaged.
8. Complainant was ranked number seven out of eleven.
9. The interviewers promoted ranked candidates numbers one and four after a discussion about each candidate's qualifications. Candidate one was a Caucasian male and a candidate four was a Hispanic male.
10. The subjective criteria of experience, leadership skills and knowledge of Rockwell's operations were also considered in choosing the candidates for the two available coordinator positions.

11. Rockwell Automation did not promote Marcus Huston to either available coordinator positions based on the stated reason that after factoring in the subjective criteria, other applicants were more qualified for the position than Marcus Huston.
12. The applicants who were promoted to fill the positions both had higher ranked average scores than Marcus Huston.
13. Marcus Huston presented no evidence to compare his qualifications to the qualifications of the two successful candidates for the position.
14. Marcus Huston presented no evidence to establish that Rockwell Automation's reason for promoting candidates one and four was a pretext for race discrimination.
15. Rockwell Automation presented two affidavits as evidence in support of its hiring decision.

Discussion

The Illinois Human Rights Act provides that a party is entitled to summary decision "if the pleadings and affidavits...show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law. " 775 ILCS 5/8-106.1. That provision of the Act mirrors the well established procedure followed in the Illinois Circuit Courts. See 735 ILCS 5/2-1005 (West 2000). However, a party may overcome a Motion for Summary Decision if he presents sworn evidence to refute the motion.

In order to succeed in this case Mr. Huston must prove a prima facie case of race discrimination. The burden of production then shifts to Respondent to articulate a legitimate, non-discriminatory reason for its actions. If Respondent meets that burden then the burden shifts back to Complainant to prove that the proffered reason is merely a pretext for discrimination. *Zaderaka v. Illinois Human Rights Comm.*, 131 Ill. 2d 172, 545 N.E.2d 684, 137 Ill. Dec. 31(1989).

Here, Complainant may very well be able to prove a prima facie case of discrimination. However, his case fails because he cannot establish the element of pretext. Respondent attached two affidavits to its Motion for Summary Decision in support of its case that affirm the reason for not promoting Marcus Huston was based on the fact that other higher ranked candidates were more qualified. This determination was based on the subjective criteria of knowledge and leadership skills within the corporation. Complainant's only response to Respondent's employment decision was that "given his day in court" he would demonstrate he was better qualified for the job than the chosen candidates. However, the key here is that Complainant did not provide a counteraffidavit or any other sworn evidence to refute Respondent's articulated reason for failing to promote Complainant.

To determine the appropriate amount of weight to afford an affidavit it is important to look to the party that has offered it as evidence. Affidavits offered to support a summary decision are always strictly construed. Affidavits offered in opposition to the motion for summary decision should be liberally construed.

The pitfall surrounding the use of affidavits lies in the notion that any facts supported in an affidavit that are not contradicted by a counteraffidavit are admitted and must be taken as true for purposes of the Motion for Summary Decision. *Purtill v. Hess*, 111 Ill.2d. 229, 489 N.E.2d 867, 871-872, 95 Ill.Dec. 305 (1986). This is where Complainant has mistaken his opportunity to counter Respondent's argument at hearing. The statements made by Respondent's witness affidavits are admitted and now must be taken as true. The affidavits establish that Respondent had a legitimate business reason for not promoting Complainant. Therefore, Complainant's naked assertions that he will prove otherwise cannot overcome Respondent's well supported motion. The court in *Carruthers v. Christopher & Co.*, 57 Ill. 2d 376, 380, 313 NE.2d 457, 459 (1974), stated "even though the complaint and answer may purport to raise issues of material

fact, if such issues are not further supported by evidentiary facts through affidavits or such, summary judgment is then appropriate." *Id at 380 and 459.*

In this case, Rockwell filed a well grounded motion for summary decision and attached to it sworn affidavits. The motion and affidavits establish there is no genuine issue of material fact between the parties with respect to the essential element of pretext. If Marcus Huston had evidence to show Rockwell's employment decision was a pretext for race discrimination it was incumbent on him to file a counteraffidavit to establish that claim. *Graze v. Lawless*, 71 Ill. App. 3d 669, 389 N.E. 2d 957(3rd Dist. 1979). "The [trier of fact] [cannot] surmise or speculate in the absence of counteraffidavits." *Id at 671, 959*, citing *Tuohey v. Yellow Cab Co.*, 33 Ill. App. 2d, 180, 180 N.E. 2d 691(1st. Dist. 1962). Accordingly, Respondent's motion must be granted.

Conclusions of Law

1. Marcus Huston cannot establish the necessary element of pretext needed to prove he was discriminated against on the basis of his race by Rockwell Automation.
2. In the pleadings and affidavits before me, no genuine issue of material fact exists between the parties on the issue of whether Rockwell Automation failed to promote Marcus Huston on the basis of his race. Therefore, pursuant to 775 ILCS 5/8-106.1, Rockwell Automation is entitled to a recommended order as a matter of law.

Recommendation

Based on the above findings of fact and conclusions of law, I recommend that the Illinois Human Rights Commission grant Respondent's Motion for Summary Decision. I further recommend that the complaint, together with the underlying charge number

1997SF0980, be dismissed with prejudice.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Administrative Law Section

ENTERED THIS 10TH DAY OF AUGUST, 2001.